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8 Attorneys for Plaintiff Palo Mobile Estates
Associates

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 PALO MOBILE ESTATES ASSOCIATES, a
13 California limited partnership,

14 Plaintiff,

15 vs.

16 CITY OF EAST PALO ALTO, a municipal
17 corporation; DOES 1 through 10, inclusive,

18 Defendants.

CASE NO. C 07-03601 PJH

FIRST SUPPLEMENTAL COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND INVERSE CONDEMNATION

Superior Court Action Filed: June 12, 2007
Removed to Federal Court: July 12, 2007
Trial Date: None Set

19 Plaintiff Palo Mobile Estates Associates ("PME" or "Plaintiff") by this first supplemental
20 complaint ("Complaint") hereby alleges as follows:

21 JURISDICTION

22 1. The jurisdiction of this Court over the subject matter of this action is predicated on
23 28 U.S.C. §§ 1332 and 1367. This Court has original jurisdiction under 28 U.S.C. § 1331 in that
24 the Third Cause of Action arises under the Fifth and Fourteenth Amendments of the United States
25 Constitution, asserting a taking of Plaintiff's property for a non-public purpose and without just
26 compensation. Furthermore, pursuant to 28 U.S.C. § 1367, the Court has supplemental
27 jurisdiction over the First and Second Causes of Action in that these claims are so related to the
28

1 Third Cause of Action that they form part of the same case or controversy under Article III of the
2 United States Constitution.

3 2. This Court has personal jurisdiction over Defendants as they are, and at all relevant
4 times hereinafter mentioned were, political subdivisions, cities, political and administrative
5 bodies, domiciliaries, and/or residents of the State of California.

6 VENUE & INTRADISTRICT ASSIGNMENT

7 3. Venue is properly placed and this action is properly assigned to the Northern
8 District of California, San Francisco District pursuant to Local Rule 3-2 (d) in that: (a) the
9 wrongful conduct, acts and omissions of Defendants hereinafter alleged occurred and took place in
10 the County of San Mateo, State of California; (b) the effects of such wrongful conduct and the
11 damages resulting therefrom to PME have occurred within the County of San Mateo, State of
12 California; (c) the Defendants, their employees and representatives and most of the witnesses to
13 the conduct alleged herein reside in or around the County of San Mateo or have their principal
14 places of business and conduct their businesses within the County of San Mateo, State of
15 California.

16 THE PARTIES

17 4. PME is a California limited partnership duly authorized and existing under and by
18 virtue of the laws of the State of California.

19 5. PME is informed and believes, and thereon alleges, that defendant City of East Palo
20 Alto ("City" or "Defendant") is a municipal corporation organized and existing under the laws of
21 the State of California.

22 6. The true names and capacities, whether individual, corporate, associate,
23 governmental or otherwise, of defendants Does 1-10, inclusive, are unknown to PME at this time
24 and PME therefore sues said defendants by such fictitious names. Leave of Court will be
25 requested to amend this Complaint to show their true names and capacities when the same have
26 been ascertained. City and Does 1-10, inclusive, are sometimes hereinafter collectively referred to
27 as "Defendants." PME is further informed and believes, and thereon alleges that Defendants, and
28 each of them, in doing the things hereinafter alleged were acting pursuant to the course and scope

1 of their authority as agents, servants, and employees of one another and with the permission and
 2 consent of their co-defendants.

3 7. PME is informed and believes, and based thereon alleges, that Defendants, and
 4 each of them, conspired and acted in concert with each other with respect to the events and
 5 happenings referred to herein which proximately caused the damages hereinafter alleged.

6 GENERAL FACTUAL ALLEGATIONS

7 A. Introduction

8 8. PME is the owner of Palo Mobile Estates (the "Park"), a mobilehome park located
 9 in the City of East Palo Alto. PME was and is seeking to convert the Park to resident ownership
 10 pursuant to California Government Code section 66427.5. Such a conversion would mean that the
 11 residents of the Park would own their own real estate units, as well as an undivided interest in the
 12 common areas, as opposed to a rental-only facility owned by Plaintiff. When a mobilehome park
 13 is converted to condominium-style ownership, each lot in the mobilehome park becomes
 14 separately transferable pursuant to state law and subject to applicable covenants, conditions, and
 15 restrictions. State law provides for its own form of rent control applicable in a resident-owned
 16 park and preempts any otherwise applicable local rent control.

17 9. California has adopted a comprehensive statutory scheme governing conversion of
 18 mobilehome parks from rental facilities to resident-owned, or condominium-style, parks. The
 19 agency principally responsible for administering that statutory scheme is the California
 20 Department of Real Estate. Under California law, the authority of local bodies such as City is
 21 limited to consideration of an application for a tentative tract map pursuant to Government Code
 22 section 66427.5 (within the Subdivision Map Act, Government Code section 66410 *et seq.*). Such
 23 a map has the effect of subdividing the single parcel into separately transferable real estate units,
 24 as well as interest in undivided common areas. No construction or physical development at the
 25 mobilehome park is contemplated or necessary. Rather, the subdivision is a legal division
 26 whereby separate sellable interests are created within the park.

27 10. A local agency's, such as City's, consideration of such an application is governed
 28 by Government Code section 66427.5, which provides specific and detailed requirements for

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1 conversions to resident ownership and explicitly limits the local government's review of the
 2 application to the question of whether the requirements of Government Code section 66427.5 have
 3 been satisfied. After the local government approves the map subdivision, the California
 4 Department of Real Estate regulates the marketing and sale of the individual units in the
 5 mobilehome park.

6 11. Pursuant to this statutory framework, PME has submitted an application for a
 7 tentative tract map to subdivide the Park for condominium purposes ("Application"). The
 8 Application does not contemplate any new building or development; it merely subdivides the
 9 property lines to allow for resident ownership of lots in the Park.

10 B. The Moratorium

11 12. In or around March 2007, PME became aware that City was planning a vote
 12 regarding a proposed interim urgency ordinance, allegedly pursuant to Government Code section
 13 65858, to impose a forty-five (45) day moratorium on approving applications for conversions of
 14 mobilehome parks to resident ownership within the City.

15 13. In a letter dated March 9, 2007, PME advised City that the proposed moratorium
 16 was illegal in light of controlling state statutes and appellate court opinions. PME advised City that
 17 the proposed moratorium was not supported by adequate legislative findings, as required under
 18 Government Code section 65858, and was therefore an improper use of City's authority to pass
 19 interim urgency measures. PME further informed City that it was preempted from legislating in
 20 the area of mobilehome park conversions from rental-only facilities to resident ownership.

21 14. Nevertheless, during a City Counsel hearing on March 13, 2007, City, acting
 22 through its City Council, enacted Ordinance No. 299 imposing a temporary forty-five (45) day
 23 moratorium on the conversion of mobilehome parks to resident ownership in the City of East Palo
 24 Alto ("Original Moratorium"). A true and correct copy of Ordinance No. 299 is attached hereto as
 25 Exhibit "A."

26 15. In a letter dated April 13, 2007, PME again advised City that the Original
 27 Moratorium was an improper use of City's authority to pass interim urgency measures and was
 28 violative of California law. PME informed City that the conversion of a mobilehome park from a

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1 leasehold to resident ownership did not constitute a change of use allowing for the imposition of
 2 an interim ordinance under Section 65858(a) prohibiting its use. PME reiterated that, even if the
 3 conversions to resident ownership constituted a change of use, which it did not, Defendants
 4 abused their discretion by enacting the Original Moratorium without meeting the mandatory
 5 prerequisites set forth in Government Code section 65858(c), *i.e.*, making adequate legislative
 6 findings that the conversion of mobilehome parks to resident ownership constitute “a current and
 7 immediate threat to the public health, safety, or welfare. . .” Cal. Gov’t Code § 65858(c). Lastly,
 8 PME noted City was preempted entirely from legislating in the area of mobilehome park
 9 conversions from rental-only facilities to resident ownership. PME advised City that, for those
 10 same reasons, an extension of the Original Moratorium would also be violative of the law.

11 16. On April 24, 2007, the City Council held a hearing to consider, among other things,
 12 extending the Original Moratorium. Representatives of PME were present at the April 24, 2007
 13 hearing and again attempted to advise City that the Original Moratorium, and its extension, was
 14 violative of the law. However, City disregarded PME’s objections and adopted Ordinance No.
 15 300 extending the Original Moratorium for a period of three (3) months (“Extended Moratorium,”
 16 together with Original Moratorium, “Moratorium”). Specifically Section 2 of Ordinance No. 300
 17 states, “[d]uring the period this ordinance remains in effect [from April 27, 2007 to and including
 18 July 27, 2007], no permit or approval of any entitlement application shall be granted allowing the
 19 conversion of a mobilehome park to resident ownership within the city of East Palo Alto.”
 20 Furthermore, Ordinance No. 300 states the purpose of the Moratorium is “to provide staff and
 21 advisory bodies sufficient time to study the issues and make recommendations on whether and
 22 how to regulate mobilehome park conversions. . .” Such regulation is expressly prohibited by
 23 California law. A true and correct copy of Ordinance No. 300 is attached hereto as Exhibit “B.”

24 17. During the April 24, 2007 hearing, members of the City Council made clear their
 25 desire to stop mobilehome park conversions to resident ownership, despite clear state statutory
 26 authority enabling and encouraging owner-initiated conversions. It is evident both from the tenor
 27 of the April 24, 2007 hearing and the alleged “findings” in the Extended Moratorium that City, in
 28 addition to improperly including mobilehomes in its affordable housing calculus, has concluded

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1 that affordable rental opportunities allegedly provided by mobilehome parks as rental-only
 2 facilities should be promoted over affordable homeownership opportunities available after
 3 mobilehome park conversions to resident ownership, despite state statutory determinations
 4 otherwise.

5 C. Ordinance No. 305

6 18. In or around July, 2007, Plaintiff learned that City intended to enact an ordinance
 7 imposing illegal conditions on the conversion of mobilehome parks within the City of East Palo
 8 Alto. In a letter dated July 6, 2007, Plaintiff advised City that the proposed ordinance was clearly
 9 illegal in light of appellate court opinion and California law and was so unreasonable from a legal
 10 standpoint that it was clearly intended solely for the purpose of delay or obstruction.

11 19. At a hearing regarding the proposed ordinance on July 10, 2007, counsel for
 12 Plaintiff again explained to City Council that the proposed ordinance violated state law, and even
 13 referred the City Council to published appellate precedent and to specific legislative history
 14 materials that left no doubt that the proposed ordinance violated state law. However, members of
 15 the City Council made clear their desire to stop conversions to resident ownership unless resident
 16 initiated or resident driven, despite the law being clear that residents do not have veto power over
 17 conversions pursuant to Section 66427.5.

18 20. The City Council failed to establish the necessary quorum to adopt the proposed
 19 ordinance as an urgency measure, which would have been immediately effective upon adoption, at
 20 the July 10, 2007 hearing. Nevertheless, the City Council approved of the proposed ordinance on
 21 its first reading at the July 10, 2007 hearing, with minor modifications to reflect that fact that the
 22 proposed ordinance would not be approved as an urgency ordinance.

23 21. On July 17, 2007, the City Council held the second reading of the proposed
 24 ordinance, at which time it formally enacted the proposed ordinance imposing certain illegal
 25 conditions on the conversion of mobilehome parks within the City (the "Ordinance"), effective
 26 thirty (30) days from the date of adoption.

27 22. The Ordinance requires that a mobilehome park owner who seeks to convert the
 28 park to resident ownership must, among other things, (i) submit documentation evidencing that the

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1 park is in compliance with Title 25 requirements, which is exclusively the domain of the
 2 California Department of Housing and Community Development ("HCD"), including copies of all
 3 Title 25 Inspection Reports for the previous three (3) years or obtaining one if no such inspections
 4 have occurred within that time period, a list of all deficiencies found on inspection and evidence
 5 that all deficiencies have been corrected, and written documentation from the HCD that the park
 6 complies with all applicable Title 25 requirements; (ii) submit an engineering report prepared by a
 7 registered civil or structural engineer or licensed general engineering contractor on the type, size,
 8 current condition, adequacy and remaining useful life of common facilities located within the
 9 park, including, but not limited to, water systems, sanitary sewer, fire protection, storm water,
 10 streets, lighting, pools, playgrounds, and community buildings; (iii) submit a tenant impact report
 11 which requires extensive and burdensome information, some of which involves residents' private
 12 personal and financial information, that is not within the park owner's possession and is not within
 13 the City's proper discretion or consideration, including the components of existing resident
 14 households including family size, age of residents, estimated household income and whether the
 15 household receives government subsidies, the availability of mobilehome spaces within City limits
 16 and current space rent charged for the space, an analysis of moving an existing mobilehome to
 17 another site, and a market rent survey or appraisal; (iv) submit certain information regarding the
 18 resident survey of support which is not required by state law, such as written evidence of the
 19 agreement between the applicant and the homeowners' association regarding the survey of
 20 support; and, (v) submit certain legal documents that are not within the City's proper discretion or
 21 consideration, but rather is information that state law requires to be provided to the California
 22 Department of Real Estate after local approval of the subdivision map, including documents
 23 prepared for and defining the powers and duties of the proposed homeowners' association such as
 24 articles of incorporation, by-laws, and conditions, covenants and restrictions and a general title
 25 report. A true and correct copy of the Ordinance is attached hereto as Exhibit "C."

26 23. As a result of City's illegal acts, PME has been damaged for a sum in excess of
 27 \$14,625,000.00, which sum represents, among other things, the loss in the fair market value of
 28

1 PME's mobilehome park and loss of income caused by its inability to convert its Park to resident
2 ownership.

3 24. In order to expedite resolution on the validity of the Ordinance and pursuant to the
4 Supreme Court's decision in *Kavanau v. Santa Monica Rent Control Board*, Plaintiff has also filed
5 a separate Petition for Writ of Mandate relating to the Moratorium in the San Mateo Superior
6 Court. 16 Cal. 4th 761, 779 (1997) ("[I]f a property owner brings a timely action to set aside or
7 void a regulation, he may *but need not* join a claim for damages. Instead, he may bring a damages
8 claim separately after successfully challenging the regulation.").

9 25. On May 1, 2007, PME filed a claim with City, pursuant to Government Code
10 section 810 *et seq.*, otherwise known as the California Tort Claims Act, relating to the
11 Moratorium, originally enacted by Ordinance No. 299 on March 13, 2007 and subsequently
12 extended by Ordinance No. 300 on April 24, 2007. In a letter dated June 11, 2007, City rejected
13 Plaintiff's claim.

14 26. On August 24, 2007, PME filed a second claim with City relating to Ordinance No.
15 305, adopted on July 17, 2007 and effective as of August 16, 2007. In a letter dated September
16 12, 2007, City rejected Plaintiff's second claim

17 FIRST CAUSE OF ACTION

18 (For Declaratory Relief Against City and Does 1 – 10)

19 27. Plaintiff re-alleges and incorporates herein by this reference Paragraphs 1 through
20 26, inclusive, as if set forth in full herein.

21 28. An actual controversy has arisen and now exists between Plaintiff and Defendants,
22 and each of them, regarding their respective rights, duties, and obligations under Government
23 Code section 66427.5, California law, and the Ordinance in that Plaintiff contends Defendants
24 acted illegally in enacting the Ordinance as, pursuant to California law, local authority in the area
25 of mobilehome conversions to resident ownership is limited to confirming that applications for
26 conversion comply with the requirements contained in Government Code section 66427.5 (within
27 the Subdivision Map Act, Government Code sections 66410 *et seq.*), local governments are
28 strictly prohibited from imposing additional conditions not contained in Government Code section

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66427.5, and none of the conditions imposed by the Ordinance are contained in Government Code section 66427.5, whereas Defendants dispute these contentions.

29. Plaintiff desires a judicial determination of the respective rights and duties of Plaintiff and of Defendants with respect to Government Code sections 66427.5, California law, and the Ordinance. In particular, Plaintiff desires a declaration that Government Code section 66427.5 and California law render the Ordinance invalid in its present form;

30. Such a declaration is necessary and appropriate at this time in order that Plaintiff may ascertain Plaintiff's rights and duties with respect to Government Code sections 66427.5, California law, and the Ordinance.

SECOND CAUSE OF ACTION

(For a Preliminary Injunction and a Permanent Injunction Against City and Does 1 – 10)

31. Plaintiff re-alleges and incorporates herein by this reference Paragraphs 1 through 30, inclusive, as if set forth in full herein.

32. Plaintiff seeks a preliminary and permanent injunction to enjoin Defendants from enforcing the Ordinance in its present form.

33. Plaintiff has demanded that Defendants stop their wrongful conduct described above and to vacate the Ordinance. Defendants, and each of them, have refused to comply with Plaintiff's demands and have continued to uphold and enforce the Ordinance, notwithstanding Plaintiff's request that City cease enforcing the Ordinance and immediately vacate the same.

34. Unless and until enjoined and restrained by this Court, Defendants' conduct has caused and will continue to cause Plaintiff to suffer grave and irreparable injury. Plaintiff's lawful use of its property has been unlawfully stymied by the Ordinance. Among other things, Plaintiff is unable to convert its Park to residential ownership, thereby facing loss in the fair market value of the Park and loss of income. Plaintiff's injuries are continuous and ongoing.

35. Plaintiff is likely to prevail on the merits of this action as Defendants clearly acted without legal authority in enacting the Ordinance in that, pursuant to California law, local authority in the area of mobilehome conversions is limited to confirming that applications for conversion comply with the requirements contained in Government Code section 66427.5 (within

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1 the Subdivision Map Act, Government Code sections 66410 *et seq.*). Local governments are
 2 strictly prohibited from imposing additional conditions not contained in Government Code section
 3 66427.5. The conditions imposed by the Ordinance are in excess of those contained in
 4 Government Code section 66427.5, and contravene its purpose of state-wide uniformity.

5 36. Plaintiff has no plain, speedy, or adequate remedy at law, and injunctive relief is
 6 authorized by California Code of Civil Procedure section 526.

7 THIRD CAUSE OF ACTION

8 (For Inverse Condemnation Against City and Does 1 – 10)

9 37. Plaintiff re-alleges and incorporates by reference each and all of the allegations
 10 contained in paragraph numbers 1 through 36, as if set out in full.

11 38. Plaintiff has a legal right to convert its mobilehome Park to resident ownership.
 12 City's enactment of both the Moratorium and the Ordinance amounts to an unconstitutional taking
 13 and fails substantially to advance legitimate government interests as required by the Takings
 14 Clause of the Fifth Amendment to the United States Constitution and Article I, Section 19 of the
 15 California Constitution. By enacting the Moratorium and the Ordinance, City exceeded its
 16 authority and jurisdiction and interfered with the statutory and regulatory process as established by
 17 the California Legislature. The Moratorium and the Ordinance frustrate the state law which is
 18 intended to establish uniform state-wide standards designed to regulate mobilehome parks.

19 39. The Moratorium and the Ordinance work an unconstitutional taking of Plaintiff's
 20 private property for public use because they do not advance any legitimate interest of City and
 21 they constitute an illegal exaction imposed on Plaintiff. State law prohibits the enactment of the
 22 Moratorium. State law also prohibits the City from imposing the conditions set forth in the
 23 Ordinance. Plaintiff is informed and believes, and based on such information and belief alleges,
 24 that City enacted the Moratorium and the Ordinance knowing that it had no power to do so.

25 40. Plaintiff is further informed and believes, and based on such information and belief
 26 alleges, that City enacted the Moratorium and the Ordinance knowing that they did not advance
 27 any legitimate governmental interests.
 28

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41. Even assuming City had the power to enact the Moratorium and/or the Ordinance, Plaintiff is informed and believes, and based on such information and belief alleges, that there is not an essential nexus between the prohibition imposed in the Moratorium and the conditions imposed in the Ordinance and any authority City may have to enact either the Moratorium or the Ordinance. Moreover, Plaintiff is informed and believes, and based on such information and belief alleges, that the prohibition imposed on the Moratorium and the conditions imposed in the Ordinance are not roughly proportional to the effects of the conversion of Plaintiff's mobilehome Park. Rather, both the Moratorium and the Ordinance prevent Plaintiff from exercising a legitimate right to convert its Park to resident ownership and force Plaintiff, a single property owner, to bear a disproportionate share of the cost of allegedly protecting the public safety, health and welfare.

42. Plaintiff has suffered and continues to suffer damages, in an amount to be proven at trial, as a result of City's unconstitutional taking of its private property. Plaintiff's lawful use of its property has been unlawfully stymied and the value of the Park have been damaged by the imposition of the illegally enacted Moratorium and Ordinance, resulting in damages for a taking in an amount to be proven at trial but believed to be not less than \$14,625,000.00.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For a judicial declaration of the respective rights and duties of Plaintiff and of Defendants with respect to Government Code section 66427.5, California law, and the Ordinance. In particular, Plaintiff desires a declaration that the Ordinance violates Government Code section 66427.5 and California law renders the Ordinance invalid in its present form;

2. For a preliminary injunction and permanent injunction prohibiting Defendants from enforcing the Ordinance in its present form;

3. For recovery of damages against Defendants in an amount to be proven at trial, but not less than \$14,625,000.00;

4. For an award of costs of suit, expenses, and reasonable attorneys' fees against Defendants; and

1 5. For such other further relief as the Court deems just and proper.

2
3 DATED: November 22 2007

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6 By: 

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Attorneys for Plaintiff Palo Mobile Estates
Associates
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